

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

SHELLEY A. TERLECKI,
Plaintiff,

v.

Case No. 10-C-478

MICHAEL J. ASTRUE,
Defendant.

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS

On June 8, 2010, Shelley A. Terlecki (“Terlecki”), proceeding pro se, filed a complaint challenging a decision of the Commissioner of the Social Security Administration. (Docket No. 1.) Accompanying her complaint is a motion to proceed in forma pauperis. (Docket No. 2.) Terlecki has consented to the full jurisdiction of a magistrate judge. (Docket No. 3.)

Before the court can allow the plaintiff to proceed in forma pauperis, the court is obligated to determine that Terlecki is unable to pay the \$350.00 filing fee and that this case (1) is not frivolous or malicious, (2) does not fail to state a claim upon which relief may be granted, and (3) does not seek monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992); Neitzke v. Williams, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. A complaint should be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). In

reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

Having reviewed the financial information submitted in support of her motion to proceed in forma pauperis, the court is satisfied that the plaintiff lacks the financial resources to pay the filing fee. Therefore, the court shall turn to the claims raised in the complaint.

Based upon Terlecki's complaint, it appears that she is challenging an unfavorable disability determination by the Commissioner of the Social Security Administration. This is not the first time Terlecki has filed such a complaint in federal court. On June 12, 2007, Terlecki, proceeding with the assistance of counsel, filed a social security complaint challenging a decision of the Commissioner. (Case No. 07-C-535, Docket No. 1.) The Honorable Rudolph T. Randa presided over that case, and on September 19, 2007, the parties filed a joint motion to remand the case to the administrative law judge, (Docket No. 13), which Judge Randa granted on September 26, 2007, (Docket No. 14).

The court understands that Terlecki's present complaint is an appeal of an unfavorable decision following remand. Thus, the court is unable to say that Terlecki's complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. Accordingly, Terlecki's motion to proceed in forma pauperis shall be granted.

IT IS THEREFORE ORDERED that the plaintiff's motion to proceed in forma pauperis, (Docket No. 2), is **granted**.

Dated at Milwaukee, Wisconsin this 15th day of June 2010.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge